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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

- - -

THE HONORABLE DAVID HITTNER, JUDGE PRESIDING

UNITED STATES OF AMERICA, No. 22-cr-120

Plaintiff,

vs.

SCOTT THOMAS PROVOST,

Defendant.

RE-ARRAIGNMENT HEARING

OFFICIAL REPORTER'S TRANSCRIPT OF PROCEEDINGS

Houston, Texas

January 6, 2023

APPEARANCES:

For the Plaintiff: Karen Lansden, Esq.

For the Defendant: R. Victoria Gilcrease-Garcia, Esq.

Reported by: Nichole Forrest, RDR, CRR, CRC
Official Court Reporter
U.S. District Court
Southern District of Texas

Proceedings recorded by mechanical stenography.
Transcript produced by Reporter on computer.

PROCEEDINGS

(The following proceedings held in open court.)

* * *

THE COURT: The Court calls the case,
Criminal Matter 22-120, United States versus Scott
Thomas Provost.

Who represents the government?

MS. LANSDEN: Karen Lansden on behalf of
the United States.

THE COURT: For the defense?

MS. GILCREASE-GARCIA: Victoria
Gilcrease-Garcia on behalf of Mr. Provost.

THE COURT: Mr. Provost, I understand you
want to plead guilty in this matter; correct?

THE DEFENDANT: Yes, I do, sir.

THE COURT: Raise your right hand and be
sworn.

(Defendant sworn.)

THE COURT: Do you understand you're now
under oath, and if you answer any of my questions
falsely, those answers may later be used against you
in another prosecution for perjury; that is, for

1 making a false statement?

2 THE DEFENDANT: Yes.

3 THE COURT: Please state your full name.

4 THE DEFENDANT: Scott Thomas Provost.

5 THE COURT: Age?

6 THE DEFENDANT: 62.

7 THE COURT: 62?

8 THE DEFENDANT: I was born in '58.

9 THE COURT: Pardon me?

10 THE DEFENDANT: I was born in 1958.

11 THE COURT: That's about right.

12 Education. How far did you get in school?

13 THE DEFENDANT: I did a couple years of

14 college.

15 THE COURT: Where about? Where?

16 THE DEFENDANT: 19 --

17 THE COURT: No. Where? What school?

18 THE DEFENDANT: Evangelical College of

19 Assembly of God, Southeastern College.

20 THE COURT: Have you ever been treated for
21 any mental illness or addiction to narcotic drugs?

22 THE DEFENDANT: I've been treated for
23 mental illness but not narcotic drugs.

24 THE COURT: What sort of mental illness,
25 please?

1 THE DEFENDANT: Atypical special
2 assessment. Somatic depression.

3 THE COURT: Are you taking any drug,
4 medication or alcoholic beverage at any time?

5 THE DEFENDANT: No.

6 THE COURT: When was the last time you
7 took any medication for your mental concerns?

8 THE DEFENDANT: In the early '90s.

9 THE COURT: Okay. Have you had sufficient
10 time to consult with your attorney?

11 THE DEFENDANT: Yes, I have.

12 THE COURT: Are you satisfied with your
13 attorney?

14 THE DEFENDANT: Very much so.

15 THE COURT: Counsel, have you had
16 sufficient time to investigate the law and the facts
17 of your client's case before the Court?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Does he understand the nature
20 of the charges pending against him?

21 THE DEFENDANT: He does.

22 THE COURT: Has he been able to cooperate
23 with you in every respect?

24 THE DEFENDANT: Yes.

25 THE COURT: In your opinion, is he now

1 mentally competent?

2 THE DEFENDANT: Yes.

3 THE COURT: Have you and your attorney
4 received a copy of the Indictment pending against you;
5 that is, the written charges in this case?

6 THE DEFENDANT: Yes, I have.

7 THE COURT: All right. Today you're
8 pleading to Count 1 and Count 2 of the Indictment.

9 Count 1 is Receipt of Child Pornography.
10 The basic elements are that the defendant knowingly
11 received material that contained child pornography;
12 that the material that contained child pornography was
13 transported in or affecting interstate or foreign
14 commerce by any means, including by computer; and that
15 when the defendant received the material, he knew it
16 contained child pornography.

17 Count 2, you're pleading today -- that the
18 receipt of child pornography is a violation of 8
19 United States Code Section 2252A(a)(2)(b).

20 You are also pleading to Count 2,
21 Possession of Child Pornography, a violation of 18
22 United States Code Section 2252A(a)(5)(b). Those
23 elements are that the defendant knowingly possessed
24 material containing child pornography; that such
25 materials contained -- that contained child

1 pornography had been shipped or transported using any
2 means or facility of interstate or foreign commerce or
3 that it was produced using materials that had been
4 shipped or transported in or affecting interstate or
5 foreign commerce by any means including computer; and
6 that when the defendant possessed the material the
7 defendant believed that the material constituted or
8 contained child pornography.

9 Now you pled to two counts. Count 1
10 the -- what is it -- the level -- level of
11 imprisonment. The reason why I'm doing it, usually
12 it's one after the other. I jumped to the second
13 page. That's why it's a little bit out of the usual
14 but it's no problem.

15 As to Count 1, that's the receipt of child
16 pornography, the sentence is no less than five years
17 and not more than 20 years in prison; up to a \$250,000
18 fine, supervised release up to five years to life,
19 \$100 special assessment, \$5,000 assessment under the
20 Justice For Victims Trafficking Act of 2015, up to
21 \$35,000 special assessment as to the individuals Amy,
22 Vicky, and Andy Child Pornography Victims Assistance
23 Act and mandatory restitution of at least \$3,000 per
24 victim.

25 On Count 2, possession, it's up to ten

1 years in prison and up to \$250,000 fine; supervised
2 release of not less than five years and up to life;
3 \$100 special assessment, \$5,000; special assessment
4 under the Justice of Victims Trafficking Act of 2015;
5 and up to \$17,000 special assessment under that same,
6 AVAA, and mandatory restitution was at least \$3,000
7 per victim.

8 I think I need to add that what is it --
9 I'm looking down here. I think I've covered it all.
10 \$100 special assessment as to each of these counts.
11 Usually it's combined, but usually it's down below.
12 Okay? I'm just saying that's why I'm jumping around a
13 little bit.

14 I see in the back here it says: Sex
15 offender registration. That is what I was looking
16 for. Usually, it's further up somewhere. But it
17 states that as part of -- which one, both counts or
18 one count?

19 MS. LANSDEN: Both counts.

20 THE COURT: That you will be required to
21 register with the local, state, or federal agency as
22 applicable as a sex offender wherever you may reside.

23 All right. You understand this to be the
24 nature of the charges and the possible penalties
25 pending against you?

1 THE DEFENDANT: Yes, I do.

2 THE COURT: Do you understand you have a
3 right to plead not guilty to any offense charged
4 against you and to persist in that plea?

5 THE DEFENDANT: I understand that.

6 THE COURT: If you had continued to plead
7 not guilty, you would have had the right to a trial by
8 jury or before the Court during which you would have
9 the right to the assistance of counsel for your
10 defense, the right to see and hear all the witnesses,
11 and have them cross-examined in your defense, the
12 right on your own part to decline to testify unless
13 you voluntarily elected to do so in your own defense;
14 the right to the issuance of subpoenas or compulsory
15 process to compel the attendance of witnesses to
16 testify in your defense at a trial. The government
17 would have to prove each element of the offense of
18 which you were charged beyond a reasonable doubt.

19 You also understand that by entering a
20 plea of guilty today and if that plea is accepted, you
21 will have waived or given up your right to a trial as
22 well as those other rights associated with a trial as
23 I just described.

24 Do you also understand if I accept your
25 plea of guilty today you will be waiving all

1 non-jurisdictional defects, if any, in this
2 prosecution, such as, for example, any illegal search
3 and seizure; the violation, if any, to your right to a
4 speedy trial and an inadmissible statement if you've
5 made one. In other words, if I accept your plea of
6 guilty, you'll not be able to raise the defenses at a
7 later time.

8 Do you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Are you a citizen of the
11 United States?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: As such, do you understand
14 that the offense to which you're pleading guilty is a
15 felony offense, and if your plea is accepted, you'll
16 be adjudged guilty of that offense and such
17 adjudication will deprive you of such rights as the
18 right to vote, right to hold public office, the right
19 to serve on a jury, the right to possess any kind of a
20 firearm and also that the Court has the authority to
21 order restitution if it's an capable.

22 Do you understand all of that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Has any plea agreement been
25 entered into between the parties?

1 MS. LANSDEN: No, Your Honor.

2 THE COURT: The sentencing guidelines have
3 been set for the judges to consider in determining the
4 sentence in a criminal case.

5 Have you and your attorney discussed how
6 the guidelines might apply to your case?

7 THE DEFENDANT: Yes, we have.

8 THE COURT: Do you understand I'm not able
9 to determine the guideline sentence for your case
10 until after a presentence report has been completed,
11 and you and the government have had the opportunity to
12 challenge the facts reported by the probation officer
13 and you also understand after it's been determined
14 what the guideline is in this case, the Judge has
15 authority that is more severe or less severe than a
16 sentence called for by the guidelines.

17 And also do you understand that under some
18 circumstances you or the government may have the right
19 to appeal any sentence that a Court imposes?

20 Also do you understand finally that in the
21 federal system parole has been abolished. And if
22 you're sentenced to prison, you will not be released
23 on parole.

24 THE DEFENDANT: I understand that. Yes,
25 sir.

1 THE COURT: Has anyone made any promises
2 to you of any kind, such as possible leniency or an
3 offer of probation in order to get you to plead guilty
4 in this case?

5 THE DEFENDANT: No.

6 THE COURT: Has anyone attempted in any
7 way to threaten, force, or coerce you into pleading
8 guilty?

9 THE DEFENDANT: No.

10 THE COURT: You need to understand that if
11 I accept your plea of guilty today, you will not be
12 able to withdraw your plea at a later date?

13 Also, do you understand that the
14 government's recommendation if any for -- or request
15 for a particular sentence on your side is not binding
16 on the Court, and I'm free to assess any punishment
17 within the limits prescribed by law as I described to
18 you earlier?

19 THE DEFENDANT: Yes.

20 THE COURT: Are you now ready to enter a
21 plea?

22 THE DEFENDANT: Yes.

23 THE COURT: Counsel, do you know of any
24 reason why your client should not plead guilty?

25 MS. GILCREASE-GARCIA: No, your honor.

1 THE COURT: Do you know of any meritorious
2 defense he would have to one count to which he's
3 pleading?

4 MS. GILCREASE-GARCIA: Two counts, no.

5 THE COURT: Two counts. Thank you.

6 Before I can accept your plea, I need to
7 determine if there is a factual basis for it.

8 If you would listen to the assistant U.S.
9 attorney while she gives me a brief summary of what
10 the evidence would have been if the case had gone to
11 trial.

12 Hang on one second.

13 (Pause in proceedings.)

14 THE COURT: Counsel, go ahead.

15 MS. LANSDEN: If this case were to proceed
16 to trial, the United States would be able to prove
17 each element of the offenses of receipt and possession
18 of child pornography beyond a reasonable doubt.

19 The following facts --

20 THE COURT: You need to slow down. People
21 have a tendency to speed up, including me sometimes.
22 I catch myself. When you read you tend to speed up.

23 MS. LANSDEN: The following facts, among
24 others, would be offered to establish the defendant's
25 guilt:

1 Law enforcement agents opened an
2 investigation to identify unknown victims and target
3 subjects that were involved in possession,
4 distribution, advertising, of child sexual assault
5 abuse material via the Internet-based peer-to-peer
6 program called Freenet within the Houston area.

7 Through the investigation, law enforcement
8 determined that the IP address registered to the
9 defendant Scott Provost, in Bryan, Texas, requested
10 videos containing child sexual abuse material while
11 operating on Freenet in July of 2021.

12 On January 26 of 2022, the FBI executed a
13 federal search warrant at the defendant's residence in
14 Bryan, Texas, which is located within the Southern
15 District of Texas.

16 At that time, the agents encountered the
17 defendant who was residing at and was the sole
18 occupant of the residence.

19 THE COURT: Slow down, please.

20 MS. LANSDEN: During the search,
21 approximately four terabytes of pornography consisting
22 of many images of child pornography were found.

23 Agents discovered several thousand images
24 and videos of young children engaged in sexually
25 explicit conduct as defined under federal law 18

1 United States Code Section 2256A(2).

2 While agents were executing the search,
3 the defendant Provost consented to be interviewed by
4 agents of the FBI. Defendant Provost confirmed to
5 being the owner of the trailer. And defendant also
6 admitted to downloading four terabytes of pornography
7 utilizing file share network Freenet.

8 During the interview, the defendant stated
9 that he downloaded the Freenet software approximately
10 one year ago, and he told agents they could find the
11 child pornography on his multiple devices, which were
12 found in his bedroom. He described to agents the
13 computer's location, and the child pornography would
14 be located own two towers, specifically the bottom
15 tower that was connected to the screen in his bedroom.

16 He instructed agents that they could
17 locate the computer's directory and search for a
18 Seagate drive and that four terabytes would locate the
19 digital pornography.

20 Defendant's devices, which the pornography
21 was found on, were manufactured outside the state of
22 Texas. Consequently, the computer media at issue,
23 which was used to receive and possess the child
24 pornography, traveled in foreign and interstate
25 commerce.

1 Furthermore, the defendant utilized the
2 internet, which was a means and facility of interstate
3 commerce, to receive and possess the child
4 pornography, which was found on the above referenced
5 devices.

6 THE COURT: All right. Are these facts
7 recited by the assistant U.S. attorney true?

8 THE DEFENDANT: Yes.

9 THE COURT: Did you intend to commit the
10 acts as she just described; that is, did you know what
11 you were doing at the time?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: You may now arraign the
14 defendant as to the counts in the plea agreement,
15 unless you want to waive reading?

16 MS. GILCREASE-GARCIA: We waive reading.

17 THE COURT: As to the two counts to which
18 you plead, how do you plead; guilty or not guilty?

19 THE DEFENDANT: Guilty.

20 THE COURT: These are the Court's
21 findings: I find that the defendant mentally
22 competent at the present time. I find the factual
23 basis for the plea of guilty and the defendant
24 intended to do the act he committed.

25 I find the defendant's plea of guilty is

1 voluntarily and knowingly made, and that he
2 understands the nature of these proceedings and
3 understands the consequences of his plea of guilty.
4 Therefore, I find you guilty as charged in the two
5 counts.

6 A written presentence report will be
7 prepared by the probation office to assist me in
8 sentencing. You'll be required to give information
9 for the report, and your attorney may be present if
10 you wish.

11 The Court will permit you and your
12 attorney to read the presentence report before the
13 sentencing hearing, and at the sentencing hearing, you
14 and your counsel will be given the opportunity to
15 speak on your behalf at that time.

16 And the probation office will contact you
17 in your place of confinement.

18 Defendant is ordered to be back here for
19 sentencing on April 4, 2023, at 11:30 p.m.

20 Anything further from the government? Do
21 you have an order for me?

22 MS. LANSDEN: Preliminary order for the
23 devices --

24 THE COURT: Okay. I'm sorry.

25 Sentencing is set for April 4 at 1:30 p.m.

1 Thank you.

2 I want to mention to counsel, and I do
3 this all the time, I have a standing order for the
4 last 30-something years. Everything filed on my court
5 needs to be in 14-point type.

6 MS. LANSDEN: Apologize.

7 THE COURT: It's been on there over 35, 36
8 years. So next time, please, it makes it a lot easier
9 for all your briefs. I don't know what other judges
10 require. This is tiny stuff.

11 Any objection, counsel?

12 MS. GILCREASE-GARCIA: No, Your Honor.

13 THE COURT: Except for mine.

14 Anything further from the government?

15 MS. LANSDEN: No.

16 THE COURT: Anything further from defense?

17 MS. GILCREASE-GARCIA: No.

18 THE COURT: We'll stand adjourned.

19 Everybody is free to leave. I'll be up here.

20

21 (Court adjourned.)

22

23

24

25

C E R T I F I C A T E

I hereby certify that pursuant to Title
28, Section 753 United States Code, the foregoing is a
true and correct transcript of the stenographically
reported proceedings in the above matter.

Certified on August 21, 2023.

/s/ Nichole Forrest
Nichole Forrest, RDR, CRR, CRC

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